

DOCKET FILE COPY ORIGINAL

RECEIVED

JUL 16 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

)
)
)
)
)
)
)
)

RM -- 9267

No. of Copies rec'd.
List ABCDE

019

I. Introduction

1. On April 22, 1998, the LMCC filed the above captioned petition for rule making requesting an allocation of spectrum for the private mobile radio services. This petition was the product of a substantial collaborative effort among the member associations of the LMCC whose constituents are the many distinct entities that employ private wireless systems for the protection of life and property, and for the management and efficiency of their businesses.

2. The LMCC viewed this petition as not simply a procedural vehicle for requesting a new spectrum allocation, but also as an invitation for the Commission to commence a dialogue with one of its oldest and largest constituencies. Accordingly, the LMCC was pleased to see the petition placed on *Public Notice* a short eight days after it had been filed.

3. The response to the petition has been largely supportive. The only wide spread comments in opposition to the petition have come from the amateur radio community, and these have been limited -- for the most part -- to the identification of 420-450 MHz, as a possible reallocation band. The aeronautical community has also expressed its strong opposition to any reallocation of the 960-1215 MHz band.⁵ The aeronautical community is, however, supportive of the need for additional spectrum for the private mobile radio services. Comments in support of the petition have come from a wide selection of user

Services, RM-9267, filed April 22, 1998 ("*Petition*").

⁵ LMCC member, MRFAC, Inc., has reservations with regard to the proposed reallocation of 420-450 and 960-1215 MHz; these reservations are expected to be expressed in a separate filing which MRFAC intends to make.

groups, as well as many small businesses that serve private wireless licensees. Now, with the large number of comments filed, and the filing of these and other reply comments, the Commission should be prepared to share its own views on the important issues raised here.

4. By proceeding now with a *Notice of Inquiry* or *Notice of Proposed Rule Making* the Commission can fulfill the mandate it was given by the House and Senate Budget Act Conferees who directed the Commission: “[T]o consider the need to allocate additional spectrum for shared or exclusive use by private wireless services in a timely manner.”⁶ The LMCC remains committed to cooperating with the Commission in whatever ways possible to expedite this allocation and ensure a vibrant future for the private wireless industry. While the LMCC believes that a full airing of the issues raised in the petition and the many comments should be part of a formal rule making proceeding, a number of comments warrant a reply.

II. ARRL’s procedural arguments are infirm.

5. The American Radio Relay League, Inc. (“ARRL”) -- the national representative of the amateur radio community -- opposes a reallocation of the 420-450 MHz band, and also challenges the petition on procedural grounds. Specifically, ARRL argues that because the “refarming” proceeding⁷ and the introduction of new commercial services promise spectrum relief for the private wireless community, no demonstration of need can

⁶ 143 Congressional Record H 6172 (July 29, 1997).

⁷ PR Docket 92-235.

be accurately quantified and the petition is therefore premature.⁸

6. ARRL's argument does not reflect an objective reading of the LMCC petition. The analysis of spectrum need that is included in the petition takes into account both the expected benefits of "refarming" and the degree of market penetration of commercial service providers into traditionally private services.⁹ The LMCC's spectrum need analysis is highly detailed, and based on the technology factors used in the PSWAC report.¹⁰ This analysis reveals an immediate and very critical need for an allocation of spectrum for the private wireless radio services.

7. It is not in dispute that the "refarming" proceeding offers opportunities for the deployment of new spectrally-efficient systems in some of the most heavily congested private wireless spectrum bands. However, the full benefit of "refarming" is predicated on a nationwide migration to narrowband equipment -- a transition that will require several years, and many billions of dollars in infrastructure investments to be completed. The LMCC petition predicts that this transition is unlikely to provide tangible benefits before 2005.¹¹ In the meantime, the drastic spectrum crisis that prompted the "refarming" proceeding continues unabated.

⁸ Comments of the American Radio Relay League, Incorporated in Response to Petition for Rule Making, filed June 1, 1998 (ARRL Comments).

⁹ Petition at Appendix E.

¹⁰ See "Final Report of the Public Safety Wireless Advisory Committee to the Federal Communications Commission and the National Telecommunications and Information Administration," September 11, 1996 ("PSWAC Report").

¹¹ Petition at Appendix C.

8. Additionally, the “refarming” proceeding only addresses private wireless allocations below 800 MHz. Private wireless allocations in the 800 and 900 MHz band are vital to the private wireless community. However, as the petition demonstrates, these allocations have occupation rates of nearly 100%, and are unavailable for assignment in most urban areas of the country.¹² Nothing in the “refarming” proceeding will provide relief for the spectrum shortage in these bands.

9. The petition also takes into account the introduction of new commercial services that may -- in some instances -- satisfy needs that are currently being met by private internal networks. Again, however, this relief is likely to be limited and unrealized for a considerable period of time.¹³ Further, any relief promised by new commercial services will never be realized by a large segment of the private wireless community. As the petition describes, many private wireless users have needs that are so specialized that they will never be met by commercial service providers.¹⁴

10. Railroads, pipelines, and utilities, have critical safety needs that cannot be delegated to third parties. Taxicab operators have such intensity of use that they will overwhelm any system not dedicated for their use. Large manufacturers have systems designed specifically for in-factory applications that could not be managed by outside service providers. Large agribusiness, the forestry industry, and mining companies,

¹² *Id* at Appendix A, B.

¹³ *Id* at Appendix E. (The quantitative analysis on spectrum need predicts that commercial services will ultimately reduce the total amount of spectrum required by more than 27 MHz by 2010.)

¹⁴ *Id* at 20-27.

among others, conduct their business in remote areas that are largely uncovered by commercial systems. All of these entities are required to maintain their own internal communications systems to protect the safety of their employees, and efficiently conduct their business. Without adequate spectrum, these objectives suffer -- often with tragic consequences.

11. ARRL's comments notwithstanding, the LMCC petition has definitively demonstrated the critical need for additional spectrum allocations for private wireless systems. The petition is timely, and should be granted.

III. NTIA supports the general tenets of the petition, but recommends alternative bands of spectrum.

12. In a letter to the Commission, the National Telecommunications and Information Administration ("NTIA") expressed its support for the LMCC petition:

The petition filed by the LMCC offers the Commission an opportunity to consider innovative approaches to spectrum management in the area of private radio services. We agree with LMCC that private radio systems 'play a vital role in our nation's business and infrastructure.' ***In this light, we believe that the Commission should consider ways to supplement the spectrum management benefits of competitive bidding with other new approaches appropriate to private radio services. NTIA supports the LMCC's efforts to improve the management of spectrum to support private radio systems within a market-based process, and believes there may be sharing possibilities in frequency bands transferred to the Commission under the Omnibus Budget Reconciliation Act of 1993 (OBRA-93).***[emphasis added]¹⁵

While strongly supporting the motives behind the petition, as well as its ultimate objective, NTIA objects to any further reallocation of federal government spectrum to non-

¹⁵ Letter to Mr. Richard M. Smith, Chief, Office of Engineering and Technology, from William T. Hatch, Acting Associate Administrator, Office of Spectrum Management, NTIA, dated June 5, 1998.

government use.

13. The LMCC petition identifies the following bands of spectrum for reallocation to non-federal government use on a shared basis: 420-450; 960-1215; and 1390-1400/1427-1432/1670-1675 MHz. However, the LMCC also acknowledges that NTIA has been under increasing pressure from Congress to reallocate government spectrum, and has legitimate concerns over the long term impact of this reallocation on the ability of government entities to fulfill their various missions. Accordingly, the LMCC is fully willing to participate in discussions regarding spectrum that has already been reallocated to non-government use, but has yet to be assigned by the Commission.

14. However, much of this spectrum (e.g. non-public safety spectrum at 746-806 MHz) has been re-allocated to the Commission with the specific direction from Congress that it be allocated for commercial use and assigned through a system of competitive bidding. For this spectrum to be made available for private licensing on a non-auction basis -- as recommended by NTIA -- the Commission, NTIA, and the private wireless community will need to work with Congress to gain legislative approval for such allocations.

15. NTIA has offered its collaboration: "NTIA's Office of Spectrum Management will be available to work with the Commission in identifying sharing possibilities, if appropriate, between PMRS and Federal operations in the mixed-use bands transferred under OBRA-93 and BBA-97."¹⁶ And the LMCC has repeatedly stated its willingness to work with the Commission in any way necessary to find effective solutions to the spectrum crisis that

¹⁶ *Id.*

faces the private wireless industry.

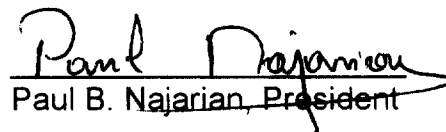
16. Accordingly, the LMCC urges the Commission to take this opportunity to commence a formal inquiry into the true needs and character of the private wireless industry. This inquiry -- if conducted contemporaneously, or in conjunction with a study by NTIA's Office of Spectrum Management -- will be an ideal vehicle for a presentation to Congress regarding the need for licensing tools that are appropriate for the private wireless industry. So long as all spectrum reallocated to the Commission must be allocated for commercial use and licensed by auction, the Commission will be unable to fully accommodate its varied constituency of non-commercial licensees and applicants.

IV. Conclusion

17. For the foregoing reasons, the Land Mobile Communications Council urges the Commission to act on the petition in a manner consistent with views set forth above.

Respectfully Submitted,

Land Mobile Communications Council
1110 North Glebe Road, Suite 500
Arlington, Virginia 22201-5720
(703) 528-5115


Paul B. Najarian, President

Date: July 16, 1998

CERTIFICATE OF SERVICE

I, Barbara J. Levermann, do hereby certify that on the 16th day of July 1998, I forwarded to the parties listed below a copy of the foregoing Reply Comments of the Land Mobile Communications Council, by first-class mail, postage pre-paid:

Ari Fitzgerald, Esq.
Legal Advisor
Office of Chairman William E. Kennard
1919 M Street, N.W., Room 814
Washington, DC 20554

David R. Siddall, Esq.
Legal Advisor
Office of Commissioner Ness
Federal Communications Commission
1919 M Street, N.W., Room 832
Washington, DC 20554

Paul E. Misener, Esq.
Senior Legal Advisor
Office of Commissioner Furchtgott-Roth
Federal Communications Commission
1919 M Street, N.W., Room 802
Washington, DC 20554

Peter A. Tenhula, Esq.
Legal Advisor
Office of Commissioner Powell
Federal Communications Commission
1919 M Street, N.W., Room 844
Washington, DC 20554

Karen L. Gulick, Esq.
Legal Advisor
Office of Commissioner Tristani
Federal Communications Commission
1919 M Street, N.W., Room 826
Washington, DC 20554

Daniel B. Phythyon, Esq.
Chief, Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, N.W., Room 5002
Washington, DC 20554

D'Wana Terry, Esq.
Chief, Public Safety & Private Wireless Division
Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, N.W., Room 8010
Washington, DC 20554

Mr. Dale N. Hatfield
Chief, Office of Engineering & Technology
Federal Communications Commission
2000 M Street N.W., Room 480
Washington, DC 20554

Christopher D. Imlay, Esq.
Counsel to ARRL
Booth, Freret, Imlay & Tepper, P.C.
5101 Wisconsin Avenue, N.W., Suite 307
Washington, DC 20016-4120

Kathy D. Smith, Esq.
Acting Chief Counsel
United States Department of Commerce
National Telecommunications & Information Administration
Washington, DC 20230



Barbara J. Levermann